

AMENDED IN ASSEMBLY JANUARY 29, 2004

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN SENATE APRIL 29, 2003

**SENATE BILL**

**No. 772**

**Introduced by Senator Bowen**  
(Coauthor: Assembly Member Reyes)

February 21, 2003

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An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9109 of the Commercial Code, and to amend Section 1731 of, to add Section 1769 to, and to add Article 5.6 (commencing with Section 848) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to ~~electricity~~ public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as amended, Bowen. ~~Electricity~~ *Public utilities*: financing ~~energy utility~~ recovery.

(1) ~~Existing law establishes the California Infrastructure and Economic Development Bank and authorizes the bank to make loans and provide other assistance to public and private entities to carry out various types of projects. Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. The existing restructuring of the electrical services industry provides for the issuance of rate reduction bonds by the bank California Infrastructure and Economic Development Bank for the recovery of transition costs, as defined, by electrical corporations.~~

~~This bill would authorize the Public Utilities Commission commission to issue financing orders pursuant to the above provisions, to support the issuance of energy recovery bonds, as defined, by the bank recovery corporation, as defined, secured by a dedicated rate component, for any electrical corporation that filed for federal bankruptcy protection or for reorganization pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) prior to December 31, 2002. The bonds would only be issued as part of a plan of reorganization endorsed by the commission to secure the emergence of the corporation from bankruptcy protection or to implement a confirmed plan, provided the commission finds that the corporation's ratepayers will benefit from lower rates as a result of the issuance of the bonds to finance the unamortized balance of the regulatory asset awarded Pacific Gas and Electric Company in commission Decision 03-12-035. The bill would establish procedures for judicial review of any order or decision made pursuant to these provisions. The bill would make other technical and conforming changes.~~

~~Since existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a crime, and the provisions of the bill would be within the act, this bill would impose a state-mandated local program by creating a new crime.~~

(2) The bill would declare that, due to the special circumstances applicable only to the Pacific Gas and Electric Company bankruptcy, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) *Existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a crime.*

*Because a violation of the provisions of this bill would be a violation of the act, this bill would impose a state-mandated local program by creating a new crime.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

~~SECTION 1.—The Legislature finds and declares all of the~~

*SECTION 1. In confirming the Public Utilities Commission's authority to approve a dedicated rate component to support the issuance of recovery bonds, the Legislature is not ratifying or endorsing any particular outcome of the Pacific Gas and Electric Company's federal bankruptcy proceeding, but rather is authorizing a means by which the commission can reduce ratepayer costs in a plan of reorganization.*

*SEC. 2. Section 955.1 of the Civil Code is amended to read:*

*955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one intended to create a security interest (paragraph (1) or (3) of subdivision (a) of Section 9109 of the Commercial Code) of any payment intangible (Section 9102 of the Commercial Code) and any transfer of accounts, chattel paper, payment intangibles, or promissory notes excluded from the coverage of Division 9 of the Commercial Code by paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.*

*(b) As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing has priority.*

*(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.*

*(d) This section does not apply to transfers or assignments of transition property, as defined in Section 840 of the Public Utilities Code, or to transfers or assignments of recovery property, as defined in Section 848 of the Public Utilities Code.*

*SEC. 3. Section 3440.1 of the Civil Code is amended to read:*

*3440.1. This chapter does not apply to any of the following:*

*(a) Things in action.*

*(b) Ships or cargoes if either are at sea or in a foreign port.*

1 (c) The sale of accounts, chattel paper, payment intangibles, or  
2 promissory notes governed by the Uniform Commercial Code,  
3 security interests, and contracts of bottomry or respondentia.

4 (d) Wines or brandies in the wineries, distilleries, or wine  
5 cellars of the makers or owners of the wines or brandies, or other  
6 persons having possession, care, and control of the wines or  
7 brandies, and the pipes, casks, and tanks in which the wines or  
8 brandies are contained, if the transfers are made in writing and  
9 executed and acknowledged, and if the transfers are recorded in the  
10 book of official records in the office of the county recorder of the  
11 county in which the wines, brandies, pipes, casks, and tanks are  
12 situated.

13 (e) A transfer or assignment made for the benefit of creditors  
14 generally or by any assignee acting under an assignment for the  
15 benefit of creditors generally.

16 (f) Property exempt from enforcement of a money judgment.

17 (g) Standing timber.

18 (h) Subject to the limitations in Section 3440.3, a transfer of  
19 personal property if all of the following conditions are satisfied:

20 (1) Prior to the date of the intended transfer, the transferor or  
21 the transferee files a financing statement, with respect to the  
22 property transferred, signed by the transferor. The financing  
23 statement shall be filed in the office of the Secretary of State in  
24 accordance with Chapter 5 (commencing with Section 9501) of  
25 Division 9 of the Commercial Code, but may use the terms  
26 “transferor” in lieu of “debtor” and “transferee” in lieu of  
27 “secured party.” The provisions of Chapter 5 (commencing with  
28 Section 9501) of Division 9 of the Commercial Code shall apply  
29 as appropriate to the financing statement.

30 (2) The transferor or the transferee publishes a notice of the  
31 intended transfer one time in a newspaper of general circulation  
32 published in the judicial district in which the personal property is  
33 located, if there is one, and if there is none in the judicial district,  
34 then in a newspaper of general circulation in the county embracing  
35 the judicial district. The publication shall be completed not less  
36 than 10 days before the date the transfer occurs. The notice shall  
37 contain the name and address of the transferor and transferee and  
38 a general statement of the character of the personal property  
39 intended to be transferred, and shall indicate the place where the

1 personal property is located and a date on or after which the  
2 transfer is to be made.

3 (i) Personal property not located within this state at the time of  
4 the transfer or attachment of the lien if the provisions of this  
5 subdivision are not used for the purpose of evading this chapter.

6 (j) A transfer of property which (1) is subject to a statute or  
7 treaty of the United States or a statute of this state that provides for  
8 the registration of transfers of title or issuance of certificates of title  
9 and (2) is so far perfected under that statute or treaty that a bona  
10 fide purchaser cannot acquire an interest in the property  
11 transferred that is superior to the interest of the transferee.

12 (k) A transfer of personal property in connection with a  
13 transaction in which the property is immediately thereafter leased  
14 by the transferor from the transferee provided the transferee  
15 purchased the property for value and in good faith (subdivision (c)  
16 of Section 10308 of the Commercial Code).

17 (l) Transition property, as defined in Section 840 of the Public  
18 Utilities Code, *or recovery property, as defined in Section 848 of*  
19 *the Public Utilities Code.*

20 *SEC. 4. Section 9109 of the Commercial Code is amended to*  
21 *read:*

22 9109. (a) Except as otherwise provided in subdivisions (c)  
23 and (d), this division applies to each of the following:

24 (1) A transaction, regardless of its form, that creates a security  
25 interest in personal property or fixtures by contract.

26 (2) An agricultural lien.

27 (3) A sale of accounts, chattel paper, payment intangibles, or  
28 promissory notes.

29 (4) A consignment.

30 (5) A security interest arising under Section 2401 or 2505, or  
31 under subdivision (3) of Section 2711, or subdivision (5) of  
32 Section 10508, as provided in Section 9110.

33 (6) A security interest arising under Section 4210 or 5118.

34 (b) The application of this division to a security interest in a  
35 secured obligation is not affected by the fact that the obligation is  
36 itself secured by a transaction or interest to which this division  
37 does not apply.

38 (c) This division does not apply to the extent that either of the  
39 following conditions is satisfied:

- 1 (1) A statute, regulation, or treaty of the United States preempts  
2 this division.
- 3 (2) The rights of a transferee beneficiary or nominated person  
4 under a letter of credit are independent and superior under Section  
5 5114.
- 6 (d) This division does not apply to any of the following:
- 7 (1) A landlord's lien, other than an agricultural lien.
- 8 (2) A lien, other than an agricultural lien, given by statute or  
9 other rule of law for services or materials, but Section 9333 applies  
10 with respect to priority of the lien.
- 11 (3) An assignment of a claim for wages, salary, or other  
12 compensation of an employee.
- 13 (4) A sale of accounts, chattel paper, payment intangibles, or  
14 promissory notes as part of a sale of the business out of which they  
15 arose.
- 16 (5) An assignment of accounts, chattel paper, payment  
17 intangibles, or promissory notes which is for the purpose of  
18 collection only.
- 19 (6) An assignment of a right to payment under a contract to an  
20 assignee that is also obligated to perform under the contract.
- 21 (7) An assignment of a single account, payment intangible, or  
22 promissory note to an assignee in full or partial satisfaction of a  
23 preexisting indebtedness.
- 24 (8) Any loan made by an insurance company pursuant to the  
25 provisions of a policy or contract issued by it and upon the sole  
26 security of the policy or contract.
- 27 (9) An assignment of a right represented by a judgment, other  
28 than a judgment taken on a right to payment that was collateral.
- 29 (10) A right of recoupment or setoff, provided that both of the  
30 following sections apply:
- 31 (A) Section 9340 applies with respect to the effectiveness of  
32 rights of recoupment or setoff against deposit accounts.
- 33 (B) Section 9404 applies with respect to defenses or claims of  
34 an account debtor.
- 35 (11) The creation or transfer of an interest in or lien on real  
36 property, including a lease or rents thereunder, except to the extent  
37 that provision is made for each of the following:
- 38 (A) Liens on real property in Sections 9203 and 9308.
- 39 (B) Fixtures in Section 9334.



(C) Fixture filings in Sections 9501, 9502, 9512, 9516, and 9519.

(D) Security agreements covering personal and real property in Section 9604.

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) Any security interest created by the assignment of the benefits of any public construction contract under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(15) Transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, *and recovery property, as defined in Section 848 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.6 (commencing with Section 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.*

(16) A claim or right of an employee or employee's dependents to receive workers' compensation under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) of the Labor Code.

(17) A transfer by a government or governmental unit.

*SEC. 5. Article 5.6 (commencing with Section 848) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:*

*Article 5.6. Financing Utility Recovery*

*848. For the purposes of this article, the following terms shall have the following meanings:*

*(a) "Consumer" means any individual, governmental body, trust, business entity or nonprofit organization which consumes electricity that has been transmitted or distributed by means of electric transmission or distribution facilities, whether those*



1 *electric transmission or distribution facilities are owned by the*  
2 *consumer, the recovery corporation, or any other party.*

3 (b) *“Financing entity” means the recovery corporation or any*  
4 *subsidiary or affiliate of the recovery corporation that is*  
5 *authorized by the commission to issue recovery bonds or acquire*  
6 *recovery property, or both.*

7 (c) *“Financing order” means an order of the commission*  
8 *adopted in accordance with this article, which shall include,*  
9 *without limitation, a procedure to require the expeditious approval*  
10 *by the commission of periodic adjustments to fixed recovery*  
11 *amounts and to any associated fixed recovery tax amounts*  
12 *included in that financing order to ensure recovery of all recovery*  
13 *costs and the costs associated with the proposed recovery,*  
14 *financing, or refinancing thereof, including the costs of servicing*  
15 *and retiring the recovery bonds contemplated by the financing*  
16 *order.*

17 (d) *“Fixed recovery amounts” means those nonbypassable*  
18 *rates and other charges, including, but not limited to, distribution,*  
19 *connection, disconnection, and termination rates and charges,*  
20 *that are authorized by the commission in a financing order to*  
21 *recover (1) recovery costs specified in the financing order, and (2)*  
22 *the costs of recovering, financing, or refinancing those recovery*  
23 *costs through a plan approved by the commission in the financing*  
24 *order, including the costs of servicing and retiring recovery bonds.*

25 (e) *“Fixed recovery tax amounts” means those nonbypassable*  
26 *rates and other charges, including, but not limited to, distribution,*  
27 *connection, disconnection, and termination rates and charges,*  
28 *that are needed to recover federal and State of California income*  
29 *and franchise taxes associated with fixed recovery amounts*  
30 *authorized by the commission in the financing order and that are*  
31 *not financed from proceeds of recovery bonds.*

32 (f) *“Local publicly owned electric utility” means a local*  
33 *publicly owned electric utility as defined in Section 9604.*

34 (g) *“Recovery bonds” means bonds, notes, certificates of*  
35 *participation or beneficial interest, or other evidences of*  
36 *indebtedness or ownership, issued pursuant to an executed*  
37 *indenture or other agreement of a financing entity, the proceeds of*  
38 *which are used, directly or indirectly, to recover, finance, or*  
39 *refinance recovery costs, and that are directly or indirectly secured*  
40 *by, or payable from, recovery property.*



1 (h) “Recovery corporation” means Pacific Gas and Electric  
2 Corporation, the electrical corporation described in the  
3 commission’s Decision No. 03-12-035.

4 (i) “Recovery costs” means (1) the unamortized balance of the  
5 regulatory asset arising and existing pursuant to the commission’s  
6 Decision No. 03-12-035, (2) federal and State of California  
7 income and franchise taxes associated with recovery of the  
8 unamortized balance of that regulatory asset, (3) costs of issuing  
9 recovery bonds, and (4) professional fees, consultant fees,  
10 redemption premiums, tender premiums and other costs incurred  
11 by the recovery corporation in using proceeds of recovery bonds  
12 to acquire outstanding securities of the recovery corporation.

13 (j) (1) “Recovery property” means the property right created  
14 pursuant to this article, including, without limitation, the right,  
15 title, and interest of the recovery corporation or its transferee:

16 (A) In and to the tariff established pursuant to a financing  
17 order, as adjusted from time to time in accordance with Section  
18 848.1 and the financing order.

19 (B) To be paid the amount that is determined in a financing  
20 order to be the amount that the recovery corporation or its  
21 transferee is lawfully entitled to receive pursuant to the provisions  
22 of this article and the proceeds thereof, and in and to all revenues,  
23 collections, claims, payments, money, or proceeds of or arising  
24 from the tariff or constituting fixed recovery amounts that are the  
25 subject of a financing order including those nonbypassable rates  
26 and other charges referred to in subdivision (d).

27 (C) In and to all rights to obtain adjustments to the tariff  
28 relating to fixed recovery amounts pursuant to the terms of Section  
29 848.1 and the financing order.

30 (2) “Recovery property” shall not include the right to be paid  
31 fixed recovery tax amounts.

32 (3) “Recovery property” shall constitute a current property  
33 right notwithstanding the fact that the value of the property right  
34 will depend on consumers using electricity or, in those instances  
35 where consumers are customers of the recovery corporation, the  
36 recovery corporation performing certain services.

37 848.1. (a) No later than 120 days after the effective date of  
38 this article, and from time to time thereafter, the recovery  
39 corporation shall apply to the commission for a determination that  
40 some or all of the recovery corporation’s recovery costs may be

1 recovered through fixed recovery amounts, which would be  
2 recovery property under this article, and that any portion of the  
3 recovery corporation's federal and State of California income and  
4 franchise taxes associated with those fixed recovery amounts and  
5 not financed from proceeds of recovery bonds be recovered  
6 through fixed recovery tax amounts. The recovery corporation may  
7 request this determination by the commission in a separate  
8 proceeding or in an existing proceeding, or both. The recovery  
9 corporation shall in its application specify that consumers within  
10 its service territory would benefit from reduced rates on a present  
11 value basis through the issuance of recovery bonds. The  
12 commission shall designate fixed recovery amounts and any  
13 associated fixed recovery tax amounts as recoverable in one or  
14 more financing orders if the commission determines, as part of its  
15 findings in connection with the financing order, that the  
16 designation of the fixed recovery amounts and any associated fixed  
17 recovery tax amounts, and the issuance of recovery bonds in  
18 connection with fixed recovery amounts, would reduce the rates on  
19 a present value basis that consumers within the recovery  
20 corporation's service territory would pay if the financing order  
21 were not adopted. Fixed recovery amounts and any associated  
22 fixed recovery tax amounts shall only be imposed on existing and  
23 future consumers in the service territory in which the recovery  
24 corporation provided electricity delivery services as of December  
25 18, 2003. Consumers within the recovery corporation's December  
26 18, 2003, service territory shall continue to pay fixed recovery  
27 amounts and any associated fixed tax recovery amounts until the  
28 recovery bonds are paid in full by the financing entity. Once the  
29 recovery bonds have been paid in full, the payment by consumers  
30 of fixed recovery amounts and fixed recovery tax amounts shall  
31 terminate.

32 (b) The commission shall establish an effective mechanism that  
33 ensures recovery of recovery costs through fixed recovery amounts  
34 and any associated fixed recovery tax amounts from all existing  
35 and future consumers in the service territory in which the recovery  
36 corporation provided electricity delivery services as of December  
37 18, 2003; provided that the costs shall not be recoverable from (1)  
38 new load or incremental load of an existing customer of the  
39 recovery corporation where the load is being met through a direct  
40 transaction and the transaction does not require the use of



1 *transmission or distribution facilities owned by the recovery*  
2 *corporation, or (2) customer generation departing load that is*  
3 *exempt from Department of Water Resources power charges*  
4 *pursuant to the commission's Decision No. 03-04-030, as modified*  
5 *by Decision No. 03-04-041, except that the load shall pay the fixed*  
6 *recovery amounts and any associated fixed recovery tax amounts*  
7 *as a component of and in proportion to any purchase of electricity*  
8 *delivered by the recovery corporation under standby or other*  
9 *service made following its departure. The obligation to pay fixed*  
10 *recovery amounts and any associated fixed recovery tax amounts*  
11 *cannot be avoided by the formation of a local publicly owned*  
12 *electric utility on or after December 18, 2003, or by annexation of*  
13 *any portion of the recovery corporation's service territory by an*  
14 *existing local publicly owned electric utility.*

15 *(c) Recovery bonds authorized by the commission's financing*  
16 *orders may be issued in one or more series on or before December*  
17 *31, 2006.*

18 *(d) The commission may issue financing orders in accordance*  
19 *with this article to facilitate the recovery, financing, or refinancing*  
20 *of recovery costs. A financing order may be adopted only upon the*  
21 *application of the recovery corporation and shall become effective*  
22 *in accordance with its terms only after the recovery corporation*  
23 *files with the commission the recovery corporation's written*  
24 *consent to all terms and conditions of the financing order. A*  
25 *financing order may specify how amounts collected from a*  
26 *consumer shall be allocated between fixed recovery amounts, any*  
27 *associated fixed recovery tax amounts, and other charges.*

28 *(e) Notwithstanding Section 455.5 or 1708, or any other*  
29 *provision of law, except as otherwise provided in this subdivision*  
30 *with respect to recovery property that has been made the basis for*  
31 *the issuance of recovery bonds and with respect to any associated*  
32 *fixed recovery tax amounts, the financing order, the fixed recovery*  
33 *amounts and any associated fixed recovery tax amounts shall be*  
34 *irrevocable, and the commission shall not have authority either by*  
35 *rescinding, altering, or amending the financing order or*  
36 *otherwise, to revalue or revise for ratemaking purposes, the*  
37 *recovery costs or the costs of recovering, financing, or refinancing*  
38 *the recovery costs, determine that the fixed recovery amounts, any*  
39 *associated fixed recovery tax amounts or rates are unjust or*  
40 *unreasonable, or in any way reduce or impair the value of recovery*

1 *property or of the right to receive any associated fixed recovery tax*  
2 *amounts either directly or indirectly by taking fixed recovery*  
3 *amounts or any associated fixed recovery tax amounts into account*  
4 *when setting other rates for the recovery corporation or when*  
5 *setting charges for the Department of Water Resources; nor shall*  
6 *the amount of revenues arising with respect thereto be subject to*  
7 *reduction, impairment, postponement, or termination. Except as*  
8 *otherwise provided in this subdivision, the State of California does*  
9 *hereby pledge and agree with the recovery corporation, owners of*  
10 *recovery property, and holders of recovery bonds that the state*  
11 *shall neither limit nor alter the fixed recovery amounts, any*  
12 *associated fixed recovery tax amounts, recovery property,*  
13 *financing orders, or any rights thereunder until the recovery*  
14 *bonds, together with the interest thereon, are fully paid and*  
15 *discharged, and any associated fixed recovery tax amounts have*  
16 *been satisfied or, in the alternative, have been refinanced through*  
17 *an additional issue of recovery bonds; provided nothing contained*  
18 *in this section shall preclude the limitation or alteration if and*  
19 *when adequate provision shall be made by law for the protection*  
20 *of the recovery corporation, owners, and holders. The financing*  
21 *entity is authorized to include this pledge and undertaking for the*  
22 *state in these recovery bonds. Notwithstanding any other provision*  
23 *of this section, the commission shall approve adjustments to the*  
24 *fixed recovery amounts and any associated fixed recovery tax*  
25 *amounts as may be necessary to ensure timely recovery of all*  
26 *recovery costs that are the subject of the pertinent financing order;*  
27 *and the costs of capital associated with the recovery, financing, or*  
28 *refinancing thereof, including servicing and retiring the recovery*  
29 *bonds contemplated by the financing order. When setting other*  
30 *rates for the recovery corporation, nothing in this subdivision shall*  
31 *prevent the commission from taking into account (1) any collection*  
32 *of fixed recovery amounts in excess of amounts actually required*  
33 *to pay recovery costs financed or refinanced by recovery bonds, or*  
34 *(2) any collection of fixed recovery tax amounts in excess of*  
35 *amounts actually required to pay federal and State of California*  
36 *income and franchise taxes associated with fixed recovery*  
37 *amounts; provided that this would not result in a*  
38 *recharacterization of the tax, accounting, and other intended*  
39 *characteristics of the financing, including, but not limited to,*  
40 *either of the following:*

1 (A) *Treating the recovery bonds as debt of the recovery*  
2 *corporation or its affiliates for federal income tax purposes.*

3 (B) *Treating the transfer of the recovery property by the*  
4 *recovery corporation as a true sale for bankruptcy purposes.*

5 (f) (1) *Financing orders issued under this article do not*  
6 *constitute a debt or liability of the state or of any political*  
7 *subdivision thereof, and do not constitute a pledge of the full faith*  
8 *and credit of the state or any of its political subdivisions, but are*  
9 *payable solely from the funds provided therefor under this article*  
10 *and shall be consistent with Sections 1 and 18 of Article XVI of the*  
11 *California Constitution. This subdivision shall in no way preclude*  
12 *bond guarantees or enhancements pursuant to this article. All*  
13 *recovery bonds shall contain on the face thereof a statement to the*  
14 *following effect: "Neither the full faith and credit nor the taxing*  
15 *power of the State of California is pledged to the payment of the*  
16 *principal of, or interest on, this bond."*

17 (2) *The issuance of recovery bonds under this article shall not*  
18 *directly, indirectly, or contingently obligate the state or any*  
19 *political subdivision thereof to levy or to pledge any form of*  
20 *taxation therefor or to make any appropriation for their payment.*

21 (g) *The commission shall establish procedures for the*  
22 *expeditious processing of applications for financing orders,*  
23 *including the approval or disapproval thereof within 120 days of*  
24 *the recovery corporation making application therefor. The*  
25 *commission shall provide in any financing order for a procedure*  
26 *for the expeditious approval by the commission of periodic*  
27 *adjustments to the fixed recovery amounts and any associated fixed*  
28 *recovery tax amounts that are the subject of the pertinent financing*  
29 *order, as required by subdivision (e). The procedure shall require*  
30 *the commission to determine whether the adjustments are required*  
31 *on each anniversary of the issuance of the financing order, and at*  
32 *the additional intervals as may be provided for in the financing*  
33 *order, and for the adjustments, if required, to be approved within*  
34 *90 days of each anniversary of the issuance of the financing order,*  
35 *or of each additional interval provided for in the financing order.*

36 (h) *Fixed recovery amounts are recovery property when, and to*  
37 *the extent that, a financing order authorizing the fixed recovery*  
38 *amounts has become effective in accordance with this article, and*  
39 *the recovery property shall thereafter continuously exist as*  
40 *property for all purposes with all of the rights and privileges of this*



1 article for the period and to the extent provided in the financing  
2 order, but in any event until the recovery bonds are paid in full,  
3 including all principal, interest, premium, costs, and arrearages  
4 thereon.

5 848.2. (a) The financing entity may issue recovery bonds  
6 upon approval by the commission in the pertinent financing  
7 orders. Recovery bonds shall be nonrecourse to the credit or any  
8 assets of the recovery corporation, other than the recovery  
9 property as specified in the pertinent financing order.

10 (b) The recovery corporation may sell and assign all or  
11 portions of its interest in recovery property to one or more  
12 financing entities that make that recovery property the basis for  
13 issuance of recovery bonds, to the extent approved in the financing  
14 order. The recovery corporation or financing entity may pledge  
15 recovery property as collateral, directly or indirectly, for recovery  
16 bonds to the extent approved in the pertinent financing orders  
17 providing for a security interest in the recovery property, in the  
18 manner set forth in Section 848.3. In addition recovery property  
19 may be sold or assigned by (1) the financing entity or a trustee for  
20 the holders of recovery bonds in connection with the exercise of  
21 remedies upon a default, or (2) any person acquiring the recovery  
22 property after a sale or assignment pursuant to this subdivision.

23 (c) To the extent that any interest in recovery property is so sold  
24 or assigned, or is so pledged as collateral, the commission shall  
25 authorize the recovery corporation to contract with the financing  
26 entity that it will continue to operate its system to provide service  
27 to consumers within its service territory, will collect amounts in  
28 respect of the fixed recovery amounts for the benefit and account  
29 of the financing entity, and will account for and remit these  
30 amounts to or for the account of the financing entity. Contracting  
31 with the financing entity in accordance with that authorization  
32 shall not impair or negate the characterization of the sale,  
33 assignment, or pledge as an absolute transfer, a true sale, or  
34 security interest, as applicable.

35 (d) Notwithstanding Section 1708 or any other provision of  
36 law, any requirement under this article or a financing order that  
37 the commission take action with respect to the subject matter of a  
38 financing order shall be binding upon the commission, as it may  
39 be constituted from time to time, and any successor agency  
40 exercising functions similar to the commission, and the

1 commission shall have no authority to rescind, alter, or amend that  
2 requirement in a financing order. The approval by the commission  
3 in a financing order of the issuance by the recovery corporation or  
4 a financing entity of recovery bonds shall include the approvals,  
5 if any, as may be required by Article 5 (commencing with Section  
6 816) and Section 701.5. Nothing in Section 701.5 shall be  
7 construed to prohibit the issuance of recovery bonds upon the  
8 terms and conditions as may be approved by the commission in a  
9 financing order. Section 851 is not applicable to the transfer or  
10 pledge of recovery property, the issuance of recovery bonds, or  
11 related transactions approved in a financing order.

12 848.3. (a) A security interest in recovery property is valid, is  
13 enforceable against the pledgor and third parties, subject to the  
14 rights of any third parties holding security interests in the recovery  
15 property perfected in the manner described in this section, and  
16 attaches when all of the following have taken place:

17 (1) The commission has issued the financing order authorizing  
18 the fixed recovery amounts included in the recovery property.

19 (2) Value has been given by the pledgees of the recovery  
20 property.

21 (3) The pledgor has signed a security agreement covering the  
22 recovery property.

23 (b) A valid and enforceable security interest in recovery  
24 property is perfected when it has attached and when a financing  
25 statement has been filed in accordance with Chapter 5  
26 (commencing with Section 9501) of Division 9 of the Commercial  
27 Code naming the pledgor of the recovery property as ‘debtor’ and  
28 identifying the recovery property. Any description of the recovery  
29 property shall be sufficient if it refers to the financing order  
30 creating the recovery property. A copy of the financing statement  
31 shall be filed with the commission by the recovery corporation that  
32 is the pledgor or transferor of the recovery property, and the  
33 commission may require the recovery corporation to make other  
34 filings with respect to the security interest in accordance with  
35 procedures it may establish, provided that the filings shall not  
36 affect the perfection of the security interest.

37 (c) A perfected security interest in recovery property is a  
38 continuously perfected security interest in all revenues and  
39 proceeds arising with respect thereto, whether or not the revenues  
40 or proceeds have accrued. Conflicting security interests shall rank



1 according to priority in time of perfection. Recovery property shall  
2 constitute property for all purposes, including for contracts  
3 securing recovery bonds, whether or not the revenues and proceeds  
4 arising with respect thereto have accrued.

5 (d) Subject to the terms of the security agreement covering the  
6 recovery property and the rights of any third parties holding  
7 security interests in the recovery property perfected in the manner  
8 described in this section, the validity and relative priority of a  
9 security interest created under this section is not defeated or  
10 adversely affected by the commingling of revenues arising with  
11 respect to the recovery property with other funds of the recovery  
12 corporation that is the pledgor or transferor of the recovery  
13 property, or by any security interest in a deposit account of that  
14 recovery corporation perfected under Division 9 (commencing  
15 with Section 9101) of the Commercial Code into which the  
16 revenues are deposited. Subject to the terms of the security  
17 agreement, upon compliance with the requirements of paragraph  
18 (1) of subdivision (b) of Section 9312 of the Commercial Code, the  
19 pledgees of the recovery property shall have a perfected security  
20 interest in all cash and deposit accounts of the recovery  
21 corporation in which revenues arising with respect to the recovery  
22 property have been commingled with other funds, but the perfected  
23 security interest shall be limited to an amount not greater than the  
24 amount of the revenues with respect to the recovery property  
25 received by the recovery corporation within 12 months before (1)  
26 any default under the security agreement or (2) the institution of  
27 insolvency proceedings by or against the recovery corporation,  
28 less payments from the revenues to the pledgees during that  
29 12-month period.

30 (e) If an event of default occurs under the security agreement  
31 covering the recovery property, the pledgees of the recovery  
32 property, subject to the terms of the security agreement, shall have  
33 all rights and remedies of a secured party upon default under  
34 Division 9 (commencing with Section 9101) of the Commercial  
35 Code, and are entitled to foreclose or otherwise enforce their  
36 security interest in the recovery property, subject to the rights of  
37 any third parties holding prior security interests in the recovery  
38 property perfected in the manner provided in this section. In  
39 addition, the commission may require in the financing order  
40 creating the recovery property that, in the event of default by the

1 *recovery corporation in payment of revenues arising with respect*  
2 *to the recovery property, the commission and any successor*  
3 *thereto, upon the application by the pledgees or transferees,*  
4 *including transferees under Section 848.4, of the recovery*  
5 *property, and without limiting any other remedies available to the*  
6 *pledgees or transferees by reason of the default, shall order the*  
7 *sequestration and payment to the pledgees or transferees of*  
8 *revenues arising with respect to the recovery property. Any order*  
9 *shall remain in full force and effect notwithstanding any*  
10 *bankruptcy, reorganization, or other insolvency proceedings with*  
11 *respect to the debtor. Any surplus in excess of amounts necessary*  
12 *to pay principal, premium, if any, interest, costs, and arrearages*  
13 *on the recovery bonds, and other costs arising under the security*  
14 *agreement, shall be remitted to the debtor.*

15 *(f) Sections 9204 and 9205 of the Commercial Code apply to a*  
16 *pledge of recovery property by the recovery corporation, an*  
17 *affiliate of the recovery corporation, or a financing entity.*

18 *(g) This section sets forth the terms by which a consensual*  
19 *security interest can be created and perfected in the recovery*  
20 *property. Unless otherwise ordered by the commission with respect*  
21 *to any series of recovery bonds on or prior to the issuance of the*  
22 *series, there shall exist a statutory lien as provided in this*  
23 *subdivision. Upon the effective date of the financing order, there*  
24 *shall exist a first priority lien on all recovery property then existing*  
25 *or thereafter arising pursuant to the terms of the financing order.*  
26 *This lien shall arise by operation of this section automatically*  
27 *without any action on the part of the recovery corporation, any*  
28 *affiliate thereof, the financing entity, or any other person. This lien*  
29 *shall secure all obligations, then existing or subsequently arising,*  
30 *to the holders of the recovery bonds issued pursuant to the*  
31 *financing order, the trustee or representative for the holders, and*  
32 *any other entity specified in the financing order. The persons for*  
33 *whose benefit this lien is established shall, upon the occurrence of*  
34 *any defaults specified in the financing order, have all rights and*  
35 *remedies of a secured party upon default under Division 9*  
36 *(commencing with Section 9101) of the Commercial Code, and are*  
37 *entitled to foreclose or otherwise enforce this statutory lien in the*  
38 *recovery property. This lien attaches to the recovery property*  
39 *regardless of who owns, or is subsequently determined to own, the*  
40 *recovery property, including the recovery corporation, any*

1 *affiliate thereof, the financing entity, or any other person. This lien*  
2 *shall be valid, perfected, and enforceable against the owner of the*  
3 *recovery property and all third parties upon the effectiveness of the*  
4 *financing order without any further public notice; provided,*  
5 *however, that any person may, but is not required, to file a*  
6 *financing statement in accordance with subdivision (b). Financing*  
7 *statements so filed may be ‘protective filings’ and are not evidence*  
8 *of the ownership of the recovery property.*

9 *A perfected statutory lien in recovery property is a continuously*  
10 *perfected lien in all revenues and proceeds arising with respect*  
11 *thereto, whether or not the revenues or proceeds have accrued.*  
12 *Conflicting liens shall rank according to priority in time of*  
13 *perfection. Recovery property shall constitute property for all*  
14 *purposes, including for contracts securing recovery bonds,*  
15 *whether or not the revenues and proceeds arising with respect*  
16 *thereto have accrued.*

17 *In addition, the commission may require, in the financing order*  
18 *creating the recovery property, that, in the event of default by the*  
19 *recovery corporation in the payment of revenues arising with*  
20 *respect to recovery property, the commission and any successor*  
21 *thereto, upon the application by the beneficiaries of the statutory*  
22 *lien, and without limiting any other remedies available to the*  
23 *beneficiaries by reason of the default, shall order the sequestration*  
24 *and payment to the beneficiaries of revenues arising with respect*  
25 *to the recovery property. Any order shall remain in full force and*  
26 *effect notwithstanding any bankruptcy, reorganization, or other*  
27 *insolvency proceedings with respect to the debtor. Any surplus in*  
28 *excess of amounts necessary to pay principal, premium, if any,*  
29 *interest, costs, and arrearages on the recovery bonds, and other*  
30 *costs arising in connection with the documents governing the*  
31 *recovery bonds, shall be remitted to the debtor.*

32 *848.4. (a) A transfer of recovery property by the recovery*  
33 *corporation to an affiliate or to a financing entity, or by an affiliate*  
34 *of the recovery corporation or a financing entity to another*  
35 *financing entity, which the parties in the governing documentation*  
36 *have expressly stated to be a sale or other absolute transfer, in a*  
37 *transaction approved in a financing order, shall be treated as an*  
38 *absolute transfer of all of the transferor’s right, title, and interest*  
39 *(as in a true sale), and not as a pledge or other financing, of the*  
40 *recovery property, other than for federal and state income and*

franchise tax purposes. The grant to holders of recovery bonds of a preferred right to revenues of the recovery corporation, or the provision by the company of other credit enhancement with respect to recovery bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(b) A transfer of recovery property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed recovery amounts included in the recovery property.

(2) An assignment of the recovery property in writing has been executed and delivered to the transferee.

(c) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the recovery property as debtor and identifying the recovery property has priority. Any description of the recovery property is sufficient if it refers to the financing order creating the recovery property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

848.5. Any successor to the recovery corporation, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the recovery corporation pursuant to this article in the same manner and to the same extent as the recovery corporation, including, but not limited to, collecting and paying to the holders of recovery bonds, or their representatives, or the applicable financing entity revenues arising with respect to the recovery property sold to the applicable financing entity or pledged to secure recovery bonds. Any successor to the recovery corporation is entitled to receive any fixed recovery tax amounts otherwise payable to the recovery corporation.

848.6. The authority of the commission to issue financing orders pursuant to Section 848.1 shall expire on December 31,

1 2006. *The expiration of the authority shall have no effect upon*  
2 *financing orders adopted by the commission pursuant to this*  
3 *article or any recovery property arising therefrom, or upon the*  
4 *charges authorized to be levied thereunder, or the rights, interests,*  
5 *and obligations of the recovery corporation or a financing entity*  
6 *or holders of recovery bonds pursuant to the financing order, or the*  
7 *authority of the commission to monitor, supervise, or take further*  
8 *action with respect to the order in accordance with the terms of this*  
9 *article and of the order.*

10 848.7. *Notwithstanding subdivision (e) of Section 848.1, the*  
11 *commission shall credit ratepayers, in a manner to be determined*  
12 *by the commission, with the net after tax amount of any payments,*  
13 *offsets, or other credits the recovery corporation actually receives*  
14 *from generators of electricity or other energy suppliers that would*  
15 *have reduced the unamortized balance of the recovery*  
16 *corporation's regulatory asset created under the commission's*  
17 *Decision No. 03-12-035 but for the prior issuance of recovery*  
18 *bonds.*

19 848.8. *Notwithstanding any other law, regulations adopted to*  
20 *implement this article are not subject to the rulemaking provisions*  
21 *of the Administrative Procedure Act (Chapter 3.5 (commencing*  
22 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*  
23 *Government Code).*

24 SEC. 6. *Section 1731 of the Public Utilities Code is amended*  
25 *to read:*

26 1731. (a) *The commission shall set an effective date when*  
27 *issuing an order or decision. The commission may set the effective*  
28 *date of an order or decision prior to the date of issuance of the order*  
29 *or decision.*

30 (b) *After any order or decision has been made by the*  
31 *commission, any party to the action or proceeding, or any*  
32 *stockholder or bondholder or other party pecuniarily interested in*  
33 *the public utility affected, may apply for a rehearing in respect to*  
34 *any matters determined in the action or proceeding and specified*  
35 *in the application for rehearing. The commission may grant and*  
36 *hold a rehearing on those matters, if in its judgment sufficient*  
37 *reason is made to appear. No cause of action arising out of any*  
38 *order or decision of the commission shall accrue in any court to any*  
39 *corporation or person unless the corporation or person has filed an*  
40 *application to the commission for a rehearing within 30 days after*



the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, “date of issuance” means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

*(d) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.*

SEC. 7. Section 1769 is added to the Public Utilities Code, to read:

1769. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4:

(a) Within 10 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 10 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and

1 shall direct the commission to certify its record in the case to the  
2 court within the time specified. No order of the commission  
3 interpreting, implementing, or applying the provisions of Article  
4 5.6 (commencing with Section 848) of Chapter 4 shall be subject  
5 to review in the courts of appeal.

6 (b) The petition for review shall be served upon the executive  
7 director of the commission either personally or by service at the  
8 office of the commission.

9 (c) For purposes of this section, the issuance of a decision or  
10 the granting of an application shall be construed to have occurred  
11 on the date when the commission mails the decision or grant to the  
12 parties to the action or proceeding.

13 (d) All actions and proceedings under this section and all  
14 actions or proceedings to which the commission or the people of  
15 the State of California are parties in which any question arises  
16 under this section, or under or concerning any order or decision  
17 of the commission under this section, shall be preferred over, and  
18 shall be heard and determined in preference to, all other civil  
19 business except election causes, irrespective of position on the  
20 calendar.

21 (e) The provisions of this article apply to actions under this  
22 section to the extent that those provisions are not in conflict with  
23 this section.

24 SEC. 8. The provisions of this act are severable. If any  
25 provision of this act or its application is held invalid, that  
26 invalidity shall not affect other provisions or applications that can  
27 be given effect without the invalid provision or application.

28 SEC. 9. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

37 SEC. 10. The Legislature finds and declares that, because of  
38 the unique circumstances applicable only to the Pacific Gas and  
39 Electric Company bankruptcy, a statute of general applicability  
40 cannot be enacted within the meaning of subdivision (b) of Section



1 16 of Article IV of the California Constitution. Therefore, this  
2 special statute is necessary.  
3

4  
5 **All matter omitted in this version of the**  
6 **bill appears in the bill as amended in the**  
7 **Assembly, September 9, 2003 (JR 11)**  
8  
9

